

EAST BATON ROUGE PARISH C-683388
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Deputy Clerk of Court

BEAUREGARD ELECTRIC
COOPERATIVE, INC., ET AL.

VERSUS

LOUISIANA PUBLIC SERVICE
COMMISSION

NUMBER 683,388; SECTION 26

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

RULING

This matter came up for hearing on the 6th day of January, 2020 on appeal by Appellants, Beauregard Electric Cooperative, Inc., Claiborne Electric Cooperative, Inc., Dixie Electric Membership Corporation, Jefferson Davis Electric Cooperative, Inc., Northeast Louisiana Power Cooperative, Inc., South Louisiana Electric Cooperative Association, and Washington-St. Tammany Electric Cooperative, Inc. (hereinafter referred to collectively as "Electric Cooperatives") seeking judicial review, injunctive relief and a declaratory judgment respecting Order R-350667, ("Order"), issued by Appellee, Louisiana Public Service Commission, ("Commission"), on April 11, 2019.

Contentions:

The Electric Cooperatives contend that the Order issued by the Commission, which, *inter alia*, mandates internal corporate governance and standards for general membership voting of the Electric Cooperatives, exceeds the Commission's constitutional authority. Electric Cooperatives complain that the Order, which dictates how privately owned businesses set term limits for its own board members and determine when a quorum of board members is present, is not only unconstitutional but also infringes upon those rights statutorily granted to them by Louisiana law, citing La. R.S. 12:401, *et seq.* Because the Commission exceeded its constitutional and jurisdictional authority when it adopted the Order, dictating corporate functions which are reserved to its shareholders/members and board of directors by the Louisiana Electric Cooperative Act, the Electric Cooperatives claim that this court should vacate the Order and find that the Commission has acted beyond its constitutional authority.

Contrariwise, the Commission asserts that, pursuant to Article IV, § 21(B) of the Louisiana Constitution, it is vested, explicitly and/or implicitly, with the constitutional power necessary to regulate common carriers and public utilities through its adoption and enforcement of reasonable rules and orders required to fulfill its purpose. The object of the Order passed on April 11, 2019, the Commission maintains, goes hand-in-hand with its obligation to regulate public utilities.

Analysis:

a) Standard of Review:

The first argument advanced by the Commission is that, because the Electric Cooperatives have failed to establish that its Order was arbitrary, capricious, a clear abuse of discretion, or not based upon the factual evidence presented, its Order must be affirmed. The Electric Cooperatives argue that the standard of review argument advanced by the Commission ignores the most basic principal - that the Commission had to have constitutional authority to adopt the Order in the first place.

There is a distinction between the Commission's issuing and interpreting its own general orders and the Commission's interpreting the language of a constitutional provision passed by the people of the State of Louisiana. In this case *sub judice*, the Commission interprets the language of La. Const. Art. 4 §21 (B) as granting it authority to pass the Order. The question of whether the Commission is given the power to pass the Order which regulates the innerworkings of private utility companies is clearly one of constitutional interpretation. Had the Electric Cooperatives sought to challenge the power of the Commission to pass orders fixing utility rates, the orders and findings of the Commission would indeed be entitled to great weight and deference and should not be overturned on judicial review unless shown to be arbitrary, capricious or an abuse of the Commission's authority; *Central Louisiana Electric Company, Inc. v. Louisiana Public Service Commission*, 370 So.2d 497 (La. 4/9/79).

B) Does the constitutional power and duty to regulate all common carriers and public utilities give the Commission the right to mandate how a private utility company conducts its business operation?

La. Const. Art. 4 §21 (B) provides:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

The Louisiana Supreme Court has construed this constitutional provision as providing the Commission with "broad and independent power and authority to regulate common carriers and public utilities;" *Louisiana Power & Light Co. v. Louisiana Pub. Serv. Comm'n*, 609 So.2d 797, 800 (La. 11/30/92); citing *South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 412 So.2d 1069, 1072 (La. 4/5/82)). The Commission's jurisdiction over public utilities has been described as "plenary;" *Daily Advertiser v. Trans-La, a Div. Of Atmos Energy Corp.*, 612 So.2d 7, 16 (La.

1/19/93), citing *Gulf States Utilities Co. v. Louisiana Pub. Serv. Comm'n*, 578 So.2d 71, 100 (La. 4/5/91).

While its constitutional authority is broad concerning regulations it may pass in its ongoing effort to regulate common carriers and public utilities, its power is not absolute. Reading the briefs submitted by the parties, the following words and phrases seem to fly off the pages: "fourth branch of government," "power grab," and "abused." The express language of the 1974 Louisiana Constitution reasonably interpreted does not allow the Commission the authority to dictate how a private company conducts its own business. The Commission's power to regulate utility companies does not include a right of the Commission to limit the term a board member may serve or abolish quorum requirements that a company had set for its own board of director elections. Nor can the Commission construe La. Const. Art. 4 §21 as bestowing it the power to dictate which certified public accounting firms must be used by Electric Cooperatives in determining the election results of its own board of director.

As stated in *Richland Gas Co., Inc. v. Hale*, 169 La. 300, 126 So 130 (La. 11/4/29), (quoted in *South Central Bell Tel. Co.*, 412 So.2d at 1073),

The commission possesses no other power than that conferred upon it by the law of its creation, and under that law it has at the utmost only the power that is conferred in express terms or by necessary or fair implication.

The historical development of the Commission reveals, and jurisprudence confirms, that it has never sought to micro manage public utility companies as it now attempts to do in its Order. And when the Commission has sought to overreach its authority, the courts have stepped in to stop its advance; *South Central Bell Tel. Co.*

For all of the above and foregoing considerations;

IT IS HEREBY ORDERED that Order R-35066 be, and the same is hereby, vacated and set aside. The court declares Order R-35066 to be invalid, finding that the Commission lacks both constitutional and statutory authority by which it can regulate corporate governance and board structure of the Electric Cooperatives. All costs of this proceeding are assessed to the Commission.

THIS DONE, READ AND SIGNED in chambers at Baton Rouge, Louisiana, this 10th day of February, 2020. Judgment to be signed in accordance with this ruling upon its filing and

I hereby certify that on this day a notice of the above and foregoing was mailed by me, with sufficient postage affixed to

Done and signed on

[Handwritten Signature]
Richard "Chip" Moore, III
Judge, 19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana
[Handwritten Signatures]
Kathryn H. Bowman, Kyle C. Maxion, Brandon M. Frey, Thomas D. Gildersleeve + Lauren M. Temento
Deputy Clerk of Court